

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

*Track Seven*

**MDL No. 2804  
Case No. 17-MD-2804  
Judge Dan Aaron Polster**

**KROGER DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL THEIR  
DAUBERT MOTION TO EXCLUDE PORTIONS OF ANNA LEMBKE'S, DAVID  
COURTWRIGHT'S, AND JAMES RAFALSKI'S OPINIONS**

Pursuant to Local Rule 5.2, Defendants The Kroger Co., Kroger Limited Partnership I, and Kroger Limited Partnership II (hereafter collectively referred to as "Kroger"), seek to file under seal their Motion to exclude certain opinions disclosed by Plaintiff's proffered expert witnesses Anna Lembke, David Courtwright, and James Rafalski, together with supporting exhibits. A proposed order is attached to this Motion as Exhibit 1.

Local Rule 5.2 provides that "No document will be accepted for filing under seal unless a . . . court order authorizes the filing of sealed documents." Kroger's Motion refers to Dr. Lembke's, Dr. Courtwright's, and Mr. Rafalski's expert reports, which Plaintiff has designated confidential in their entirety under the governing protective order. *See* ECF Nos. 441, 1357. Accordingly, all of this information is subject to the Court's Order Amending Procedures Regarding Redactions and Filing of Briefs Under Seal. *See* ECF No. 1813.

Kroger does not believe this information warrants sealing and withholding from the public. Nonetheless, Kroger seeks to comply with all applicable orders concerning designated confidential information. Kroger respectfully requests to proceed in this manner so there is no inadvertent disclosure of such information.

Kroger therefore asks the Court to grant Kroger's Motion and direct Plaintiff to indicate within three business days whether and which specific information contained in Kroger's Motions or supporting exhibits should be redacted and remain under seal. *See* ECF No. 1813 at 5–7 (disfavoring blanket sealing and requiring specific redactions). At the end of that period, any information Plaintiff does not indicate should be redacted will be made available on the Court's public docket.

Respectfully submitted,

**The Kroger Co., Kroger Limited  
Partnership I, Kroger Limited  
Partnership II,**

**By Counsel,**

s/ Ronda L. Harvey

Ronda L. Harvey, Esq. (WVSB 6326)  
Ashley Hardesty Odell, Esq. (WVSB 9380)  
Fazal A. Shere, Esq. (WVSB 5433)  
BOWLES RICE LLP  
600 Quarrier Street  
Charleston, West Virginia 25301  
304-347-1100  
rharvey@bowlesrice.com  
ahardestyodell@bowlesrice.com  
fshere@bowlesrice.com

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on February 8, 2023, the foregoing document was filed with the Clerk of the Court by using the CM/ECF system, copies of which will be served on counsel of record by the Court's CM/ECF system.

*s/ Ronda L. Harvey*  
Ronda L. Harvey, Esq. (WVSB 6326)